

1 DAVID LOY, Cal. Bar No. 229235  
ANN CAPPETTA, Cal. Bar No. 354079  
2 FIRST AMENDMENT COALITION  
534 4th Street, Suite B  
3 San Rafael, CA 94901-3334  
Telephone: 415.460.5060  
4 Email dloy@firstamendmentcoalition.org  
acappetta@firstamendmentcoalition.org

5 Attorneys for Plaintiff JOSE ANTONIO  
6 GARCIA

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 JOSE ANTONIO GARCIA,

12 Plaintiff,

13 v.

14 COUNTY OF ALAMEDA and YESENIA  
15 SANCHEZ, Sheriff of Alameda County, in her  
official capacity,

16 Defendants.  
17

Case No. 4:24-cv-3997

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF AND  
NOMINAL DAMAGES**

18 **INTRODUCTION**

19 1. The First Amendment guarantees the right to observe, record, and report on matters  
20 of public concern in public places.

21 2. The public depends on robust reporting by a free press to guarantee the unimpeded  
22 flow of information necessary for an engaged community to discuss and debate issues of public  
23 interest and petition the government for enforcement or improvement of the law.

24 3. In particular, the people have a compelling interest in timely, accurate, and  
25 complete reporting on matters relating to public safety.

26 4. When reporting on such matters, journalists may observe, record, or report on  
27 persons engaging in unlawful conduct in public places.  
28

1           5. Others may also observe, record, or report on such conduct, for example residents  
2 or bystanders who wish to expose or protest the conduct by alerting the press, posting to the  
3 internet or social media, reporting to law enforcement, or petitioning the government.

4           6. The observation or recording of such events is speech covered by the First  
5 Amendment, which protects speech about or reporting on unlawful conduct.

6           7. Journalism that reports on unlawful conduct serves the compelling interest in  
7 informing the public about the causes and consequences of such conduct and contributing to  
8 important public policy debates on whether or to what extent such conduct should be criminalized  
9 or punished.

10          8. The County of Alameda (“County”) has adopted Ordinance No. 2023-31  
11 (“Ordinance”), which criminalizes the mere observation of “sideshow events” occurring on public  
12 streets.

13          9. In doing so, the Ordinance criminalizes journalism by making it illegal to report on  
14 or record such events.

15          10. The Ordinance violates the First Amendment because it is a content-based  
16 restriction on protected speech that is not the least restrictive means to serve a compelling  
17 governmental interest.

18          11. While the government may have compelling interests in preventing or responding  
19 to unlawful and dangerous conduct of drivers who participate in sideshows or others who engage  
20 in acts such as vandalism or violence, it may not punish the protected speech of reporters or  
21 community members who observe, record, or report on such events to inform and educate the  
22 public. The government may and should serve its interests with laws directly addressing unlawful  
23 conduct itself instead of punishing protected speech.

24          12. The County may thus enforce laws against unlawful and dangerous conduct, but it  
25 may not criminalize journalism or punish observing, reporting on, or recording events of public  
26 concern, which is speech protected by the First Amendment.

27          13. As an award-winning reporter who specializes in road safety, transportation, and  
28 public health, Plaintiff Jose Antonio Garcia brings this action to prevent the County from

1 enforcing the Ordinance against him and violating his First Amendment rights to observe, record,  
2 and report on sideshows as events of public concern occurring in public places.

3 **JURISDICTION AND VENUE**

4 14. The Court has jurisdiction under 28 U.S.C. § 1331 because this action arises under  
5 the United States Constitution and 42 U.S.C. § 1983.

6 15. The Court has supplemental jurisdiction over Garcia’s state law claims under 28  
7 U.S.C. § 1367(a) because they form part of the same case or controversy as Garcia’s federal  
8 claims.

9 16. The Court may grant declaratory and injunctive relief for constitutional violations  
10 pursuant to 28 U.S.C. § 2201 and Federal Rules of Civil Procedure 57 and 65.

11 17. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events that  
12 give rise to this action occurred within this district.

13 18. The Court has personal jurisdiction over Defendants, because the County is located  
14 within the State of California and this district.

15 **DIVISIONAL ASSIGNMENT**

16 19. The events giving rise to the claims stated herein occurred substantially or fully in  
17 the County of Alameda.

18 20. Garcia is a resident of Alameda County and serves Oakland and surrounding  
19 communities, and the County’s administrative offices are located in the City of Oakland, so  
20 assignment of this case to the Oakland Division of the Northern District of California is  
21 appropriate pursuant to Civil Local Rule 3-2(c)–(d).

22 **PARTIES**

23 21. Plaintiff Jose Antonio Garcia is an award-winning reporter who writes on the road  
24 safety, transportation, and public health beat for *The Oaklandside*. He writes under his maternal  
25 family surname, “Jose Fermoso,” and will be referred to by this professional pen name in the  
26 remainder of this Complaint.



1 *Genius Behind Apple's Greatest Products*. The Knight-Wallace Reporting Fellowship is  
2 considered among the three most prestigious reporting fellowships in the United States.

3 29. Fermoso reports on road safety matters both within the City of Oakland and in parts  
4 of unincorporated Alameda County, among other areas, when issues important to Oakland  
5 communities arise outside the geographical boundaries of the City.

6 30. As Fermoso has reported, a “sideshow” is:

7 A controversial event where drivers take over city intersections with their cars as  
8 they skid in circles while performing stunts. Sideshows can last seconds or hours  
9 at a time, and they can be performed by a single individual without a crowd or by  
10 multiple people with hundreds of onlookers rallying them on. Some people have  
11 defended sideshows as an important outlet for youthful rebellion while others  
12 have noted that they often, especially in recent years, are accompanied by gun  
13 violence and rowdy behavior.

14 A true and correct excerpt of the article containing this reporting is attached hereto as **Exhibit 1**  
15 and is available at [https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-](https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-glossary-terms-definitions/#h-sideshows)  
16 [glossary-terms-definitions/#h-sideshows](https://oaklandside.org/2023/11/30/road-safety-transportation-infrastructure-glossary-terms-definitions/#h-sideshows).

17 31. Fermoso sees his role as neutrally informing Oakland communities on the facts and  
18 circumstances of sideshows, so that they are empowered with the knowledge necessary to  
19 understand the history of and problems associated with these events and may make fact-based  
20 decisions regarding sideshow attendance, policing, and policy reform.

21 32. On May 30, 2023, Fermoso published an article entitled “Map: These Oakland  
22 intersections are hotspots for sideshows” (“Mapping Article”). In reporting this article, Fermoso  
23 and his co-author mapped every report of a sideshow made to Oakland police from January 2019  
24 to November 2022. A true and correct copy of the Mapping Article is attached hereto as **Exhibit 2**  
25 and is available at <https://oaklandside.org/2023/05/30/oakland-sideshow-hotspots-map/>.

26 33. As reported in the Mapping Article, Fermoso found not only that sideshows occur  
27 throughout Oakland and the County, but also that the intersection most frequently taken over by  
28 sideshows, according to reports to police, was Keller Avenue and Skyline Boulevard, with 55 days  
of sideshow activity reported between January 2019 and November 2022.

1           34.     The intersection of Keller Avenue and Skyline Boulevard is on the border between  
2 the City of Oakland and unincorporated parts of the County. Sideshows occurring at this  
3 intersection are visible, within 200 feet, from areas of unincorporated parts of the County.

4           35.     While only 55 days of sideshow activities were reported to Oakland Police at the  
5 Keller-Skyline intersection from January 2019 to November 2022, Feroso interviewed Vijo  
6 Lucas, the manager of the Anthony Chabot Equestrian Center, which is in an unincorporated part  
7 of the County, about 500 feet from the intersection. As reported in the Mapping Article, Lucas  
8 stated that sideshows were happening “nearly every night” at the intersection between 2018 and  
9 2020, and she still hears them “four or five times a month.”

10          36.     Other sideshows Feroso listed in the Mapping Article occurred directly in  
11 unincorporated areas of the County. For example, one day of sideshow activities was reported at  
12 the intersection of Grass Valley Road and Skyline Boulevard, as well as at 7861 Redwood Road.

13          37.     Without reports of sideshows to police, Feroso would not have been able to  
14 report the Mapping Article.

15          38.     To cover sideshows, it is important to photograph, film, and record audio of the  
16 events within 200 feet of the intersections where they occur, to convey adequately detailed visual  
17 and auditory context that can enhance readers’ comprehension of the matters reported. For  
18 example, one image published in the Mapping Article showed cars lining up on 98th Avenue near  
19 an East Oakland intersection taken over for a sideshow, giving visual context to how the event  
20 impacted traffic.

21          39.     The public’s interest in and response to the Mapping Article was substantial. As of  
22 or about June 18, 2024, this article has been viewed approximately 13,000 times.

23          40.     The public has a compelling interest in reliable and thorough firsthand reporting of  
24 sideshows to understand how these events are impacting their communities’ traffic, noise,  
25 pollution, and safety as they are occurring, and use this information to make fact-based decisions  
26 regarding sideshow attendance, policing, and policy reform and advocate for their communities  
27 needs and interests.

28

**Adoption of Ordinance and Alternatives for Addressing Unlawful Conduct**

41. The Ordinance was adopted as Alameda County Ordinance No. 2023-31 on August 1, 2023, and codified as Chapter 10.40 of the Alameda County Code (“ACC”).

42. The Ordinance applies in unincorporated areas of the County and makes it “unlawful for any person to knowingly be a spectator at a sideshow event conducted on a public street or highway or off-street parking facility” and “unlawful for any person to knowingly be a spectator at the location of preparations for a sideshow event on a public street or highway or off-street parking facility.” ACC § 10.40.030(A)–(B).

43. “Spectator” means “any person who is present at a sideshow event, or the site of the preparations for a sideshow event, for the purpose of viewing, observing, watching, or witnessing the sideshow event as it progresses.” *Id.* § 10.40.020.

44. “Spectator” may include but is not limited to “any person at the location of the sideshow event that may have participated in preparations and/or promoting the sideshow event.” *Id.*

45. A person is “present” at “a sideshow event if that person is within two hundred (200) feet of the location of the sideshow event, or within two hundred (200) feet of the site of the preparations for any sideshow event.” *Id.*

46. “Sideshow” means “an occasion where one or more persons, for the purpose of performing a street race or reckless driving exhibition for one or more spectator(s) either blocks or impedes traffic on a street or highway or impedes access to an off-street parking facility.” *Id.*

47. “Sideshow event” means “a sideshow, street race, or reckless driving exhibition.” *Id.*

48. According to ACC § 10.40.020, “Preparations” for a “sideshow event” include, but are not limited to, certain specified “acts done for the purpose of facilitating, aiding, abetting, encouraging, assisting, or instigating a sideshow event,” such as:

a. “One or more motor vehicles and persons have arrived at a predetermined location.”

1           b.       “One or more persons have gathered on, or adjacent to, a public street or  
2 highway or at an off-street parking facility.”

3           c.       “One or more persons have impeded the free public use of a street or  
4 highway, or off-street parking facility by acts, words, or physical barriers.”

5           d.       “One or more motor vehicles have lined up on a public street, highway, or  
6 off-street parking facility with motors running.”

7           e.       “One or more drivers is revving a motor vehicle's engine or causing the  
8 motor vehicle's tires to spin.”

9           f.       “A person is standing or sitting in a location in the vicinity of a sideshow  
10 event to act as a race starter.”

11       49.       According to the Ordinance, “Evidence of prior acts may be admissible to show the  
12 propensity of the person to be present at or attend a sideshow event if the prior act or acts occurred  
13 within three years of the presently charged offense. These prior acts may always be admissible to  
14 show knowledge on the part of the person that a sideshow event was taking place at the time of the  
15 presently charged offense. Prior acts are not limited to those that occurred within the  
16 unincorporated Alameda County.” *Id.* § 10.40.040(B).

17       50.       Such “prior acts may include, but are not limited to . . . [t]he person charged has  
18 previously attended or been a spectator at a sideshow event” and “[t]he person charged was  
19 previously present at a location where preparations were being made for any sideshow event or  
20 where a sideshow event was in progress.” *Id.*

21       51.       A violation of the Ordinance is “a misdemeanor punishable by imprisonment not  
22 exceeding three months or by fine not exceeding one thousand dollars (\$1,000.00) or by both.” *Id.*  
23 § 10.40.050.

24       52.       Under the Ordinance, the crime of being a “spectator” at a “sideshow” requires no  
25 intent to aid, abet, solicit, incite, or conspire to engage in any unlawful conduct. *Id.* §§ 10.40.20–  
26 30.

27       53.       Instead, the Ordinance punishes the mere observation of a sideshow or related  
28 preparations, or even mere presence with intent to engage in such observation.



1           54. By prohibiting being “present” at a sideshow for purposes of viewing, observing,  
2 watching, or witnessing the sideshow, the Ordinance effectively prohibits recording or reporting  
3 on the sideshow, because viewing, observing, watching, or witnessing an event is inherently  
4 necessary to recording or reporting on it.

5           55. The Ordinance thus makes it a crime to engage in the protected speech of  
6 observing, recording, and reporting on sideshows or related preparations.

7           56. The Ordinance does not prohibit the protected speech of observing, recording, or  
8 reporting on other matters or events at the same time and place, and therefore the Ordinance  
9 punishes speech based on its content.

10          57. The Ordinance criminalizes journalism about matters of public concern related to  
11 sideshows by prohibiting reporters from observing, recording, or reporting on them from  
12 anywhere within 200 feet of a sideshow or related preparations.

13          58. The Ordinance’s prohibition of observing a sideshow or related preparations from  
14 anywhere within 200 feet of the sideshow or preparations makes it effectively impossible to  
15 observe, report on, or record the sideshow or preparations in any meaningful manner.

16          59. By making it unlawful merely to be present within 200 feet of a “sideshow event”  
17 for the purpose of “viewing, observing, watching, or witnessing the sideshow event as it  
18 progresses,” *id.* § 10.40.20, the Ordinance violates the First Amendment right to observe, record,  
19 or report on such an event, especially to the extent it is unclear how the 200-foot perimeter is  
20 measured, given that a “sideshow event” and its “preparations” are inherently fluid.

21          60. However it is measured, a 200-foot perimeter is far broader than necessary to  
22 address any risks to observers, especially as to observing “preparations,” which can include  
23 merely the arrival of one or more persons at a given location.

24          61. Indeed, one could be “present” within the 200-foot perimeter while observing the  
25 sideshow or its preparations from indoors or behind a fence or barrier, further illustrating the  
26 excessive breadth of the perimeter.

27          62. The Ordinance especially threatens reporters who have previously covered  
28 sideshows by making their prior reporting on sideshows admissible evidence of a “prior act”

1 relevant to show “propensity” for observing sideshows or “knowledge” that a sideshow is  
 2 occurring.

3 63. The actions involved in conducting a sideshow, such as blocking or impeding  
 4 traffic, street racing, or reckless driving, are already prohibited by California law, as  
 5 acknowledged in the Ordinance itself.

6 64. As admitted in the letter of the Sheriff and President of the Board of Supervisors  
 7 proposing the Ordinance, “California law already prohibits drivers and passengers from engaging  
 8 in Sideshow Events by criminalizing illegal street racing and illegal exhibitions of reckless  
 9 driving.” A true and correct copy of this letter is attached as **Exhibit 3**.

10 65. Existing laws also prohibit the conduct causing alleged problems associated with  
 11 sideshows that are referred to the Ordinance’s findings, such as the “discharge of firearms,” Cal.  
 12 Penal Code § 246.3; driving “under the influence of drugs and alcohol,” Cal. Veh. Code. § 23152;  
 13 littering, Penal Code § 374; “vandalism,” *id.* § 594; “harming or destroying” infrastructure or  
 14 other property, *id.*; blocking or preventing access, Cal. Veh. Code § 22500; “burning rubber tires,”  
 15 *id.* § 23109; Cal. Health & Safety Code § 41800; and “noise pollution,” Cal. Penal Code § 415(2).

16 66. The County may also adopt alternative laws that address problems associated with  
 17 sideshows without criminalizing the protected speech of observing and recording sideshows for  
 18 the purpose of reporting on them.

19 67. For example, the City of Oakland adopted an ordinance prohibiting the organizing  
 20 or facilitating of sideshows without making it unlawful for journalists or others to observe, record,  
 21 and report on them. *See* Oakland, Cal., Code §§ 10.74.010–10.74.090 (2023).

### 22 **Ordinance Prevents Feroso from Reporting on Sideshows**

23 68. Feroso planned to personally observe, record, and report on the occurrence of  
 24 sideshows in Oakland and unincorporated Alameda County, with particular interest in observing,  
 25 recording, and reporting on sideshows at the most frequently reported intersection of Keller  
 26 Avenue and Skyline Boulevard.

27 69. To document and report on these sideshows and provide his readers and viewers  
 28 with the most accurate account, Feroso planned such observation and reporting to include audio

1 and video recording and photographing the intersection and sideshow event from all angles,  
2 including from unincorporated parts of the County, within 200 feet of the sideshow or related  
3 preparations, to best capture images and audio for purposes of newsgathering and reporting.

4 70. However, Feroso learned that the County had adopted the Ordinance, making it a  
5 crime to be a “spectator” at a “sideshow” or related “preparations.”

6 71. After learning of the Ordinance, Feroso canceled all future plans to report on-site  
7 at sideshows in the unincorporated areas of the County because he reasonably feared citation,  
8 arrest, or criminal prosecution under the Ordinance for engaging in such reporting.

9 72. Because of his reasonable fear of citation, arrest, or criminal prosecution for  
10 observing sideshows, Feroso has been unable to engage in effective firsthand observation,  
11 reporting, and recording of sideshows in the unincorporated areas of the County since the  
12 Ordinance was passed.

13 73. Observing, recording, and reporting on these events enables the dissemination of  
14 critical information to Oakland and County communities, which facilitates more widespread  
15 awareness of sideshows and associated problems, policing, and policy.

16 74. Feroso’s readers and Oakland communities need and want more news on  
17 sideshows, including the kind of reporting he planned before the County enacted the Ordinance.

18 75. There are numerous examples of journalism about road safety prompting reform  
19 and improvements that have benefitted the public at large. For example, as Feroso reported in  
20 May 2023, *The Oaklandside*’s “impact was reflected in the budget priorities Councilmembers  
21 published last month. For the first time in years, all of them prioritized traffic safety by asking for  
22 barricades at intersections and sidewalks, hardened medians to stop sideshows, and faster repairs  
23 to potholed streets.” A true and correct copy of this article is attached hereto as **Exhibit 4** and is  
24 available at [https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-](https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/)  
25 [ousd-high-school-public-health/](https://oaklandside.org/2023/05/17/sharing-our-traffic-violence-reporting-castlemont-ousd-high-school-public-health/).

26 76. Reporters, including Feroso, regularly rely on photographs, as well as video and  
27 audio recordings, in order to gather news and information and keep the public informed. The  
28 making and publication of such documentary materials enhances the accuracy and credibility of

1 reporting, increases transparency and reader trust, and enriches news stories, allowing reporters to  
2 convey more than can be said based on the written word alone.

3 77. Without this type of reporting, the documentary evidence that supports it, and the  
4 right to observe firsthand, the public is often left only with the limited information police will  
5 disclose, which does not describe the full impact of sideshows on communities due to limited law  
6 enforcement resources, the public records exemption for investigatory records, Cal. Gov't Code §  
7 7923.600, and underreporting of concerns to police.

8 78. Firsthand observation and recording also assist law enforcement in prosecuting  
9 crimes that occur at sideshows. For example, NBC Bay Area recently reported on a sideshow in  
10 San Jose, including publishing a still from a witness's firsthand recording that depicted a sideshow  
11 participant jumping on top of a police patrol car. Alyssa Goard, *San Jose sideshow near Santana*  
12 *Row injures spectator, police officer*, NBC Bay Area (June 16, 2024),  
13 <https://www.nbcbayarea.com/news/local/south-bay/santana-row-sideshow/3568247/> (last updated  
14 June 17, 2024, 4:47 AM). The article reports that police are working to identify the suspects  
15 behind the sideshow to ensure they "are prosecuted to the fullest extent the law allows" and  
16 indicates "San Jose police are asking if anyone has any video" of "the sideshow to contact them."  
17 *Id.*

18 79. CBS News Bay Area reported on another June 2024 sideshow at which "[s]tunning  
19 video of the incident showed the dangerous scene on the Embarcadero with cars doing donuts  
20 surrounding a burning vehicle" while others "launch[ed] fireworks into the sky." Kevin Ko, *San*  
21 *Francisco police chief promises accountability, but so far no arrests in Sunday sideshows*, CBS  
22 News Bay Area (June 11, 2024, 5:59 PM) [https://www.cbsnews.com/sanfrancisco/news/san-](https://www.cbsnews.com/sanfrancisco/news/san-francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshows/)  
23 [francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshows/](https://www.cbsnews.com/sanfrancisco/news/san-francisco-police-chief-promises-accountability-but-no-arrests-so-far-in-weekend-sideshows/). San  
24 Francisco Police Department Chief William Scott "urged the public to call 911 if they ever  
25 witness a side show, while also asking witnesses to share videos with police to assist in  
26 investigations." *Id.*

27 80. Without the right to observe a sideshow, there can be no effective recording or  
28 reporting on the event. Without observation or recordings, police may lack evidence to effectively

1 prosecute sideshow participants, reporters cannot inform their audience on what happens in their  
2 communities as effectively, and communities lack reliable information based on which they might  
3 advocate for reforms.

4 **FIRST CLAIM**  
5 **42 U.S.C. § 1983**  
6 **First Amendment: Freedom of Speech**

7 81. The allegations of paragraphs 1 through 80 above are incorporated by reference as  
8 though fully set forth herein.

9 82. On its face or as applied to Feroso, the Ordinance violates the Free Speech Clause  
10 of the First Amendment by criminalizing protected speech based on its content because it prohibits  
11 recording or reporting on a defined topic or subject.

12 83. Given that enforcement of existing or potential alternative laws is available to  
13 address the problems allegedly associated with sideshows, the Ordinance is not the least restrictive  
14 means to address any compelling governmental interest.

15 84. Assuming the Ordinance could be treated as content-neutral or otherwise subject to  
16 intermediate scrutiny, it violates the Free Speech Clause of the First Amendment on its face or as  
17 applied to Feroso by criminalizing protected speech.

18 85. Given that enforcement of existing or potential alternative laws is a readily  
19 available alternative to address the problems allegedly associated with sideshows, the Ordinance  
20 burdens substantially more speech than necessary to further any significant governmental interests  
21 and is far from narrowly tailored to serve any such interests.

22 86. By making it unlawful to observe, record, or report on sideshows or related  
23 preparations from anywhere within a constantly shifting 200-foot radius, the Ordinance does not  
24 leave open ample and adequate alternatives for such observation, recording, or reporting.

25 **SECOND CLAIM**  
26 **42 U.S.C. § 1983**  
27 **First Amendment: Freedom of the Press**

28 87. The allegations of paragraphs 1 through 80 above are incorporated by reference as  
though fully set forth herein.



1 Dated: July 2, 2024

2 FIRST AMENDMENT COALITION

3 By

/s/ David Loy

4 DAVID LOY

5 ANN CAPPETTA

Attorneys for Plaintiff

6 JOSE ANTONIO GARCIA